REASONS

For Passing a General Act for Restoring the Forfeitures, humbly offered by the Persons Concerned.

THE persons Forfeited, with the Heirs of such as are Deceased and were Forfeited during the two last Reigns, (recently since the first of January, 1683.) Do humbly crave, that a general act may be past, Rescinding their Forfeitures for the Reasons following, *viz.*

First, Because it is evident by His Majesties Declaration, while Prince of *Orange* for the Kingdom of *Scotland*; That the Oppressions, and violent Persecutions, which these persons suffered, as well after as before their Forfeitures, are there set down amongst the principal Motives that induced His Majesty to undertake for the Relief of this Kingdom: And that his said Undertaking was accounted by all good men no less just and Generous, then its success was Happy and Glorious.

2*dly*. Because it is no less manifest, that the greater part of the Articles of the Declaration of the Estates against King *James*; such as the imposing of Oaths contrary to Law, the Oppression of a standing Army in time of Peace: The imposing of Exorbitant Fines, the Imprisoning persons without expressing the Reason: The imploying the Officers of the Army as Judges with their Summar Executions; and the like, were but continuations of what was begun in the preceeding Reign: And that the Claim of Right adding thereto many more particulars chiefly ascribable to that Reign, such as the forcing men to Depone in capital Crimes against themselves; The abuse of Torture, the sending of an Army upon any part of the Kingdom in an Hostile manner in time of Peace. The Charging the Ledges with Lawborrows at the Kings Instance: The Imposing of Bonds without Authority of Parliament. The putting of Garrisons in private mens Houses. The Fining Husbands for their Wives. The Imprisoning and Prosecution of persons for Petitioning the King; doth plainly hold forth, that both the Reighs were Arbitrary, and Oppressive: So that to declare King *James* to have Forfeit the Right to the Crown for the above mentioned Causes, and all other Particulars above set down, to be contrary to Law. And yet not to restore the persons who suffered thereby; and the fadest part of whose Sufferings it was to be made Mad by the said Oppressions, and forced to the Extremity of rising in Arms, would be very inconsequent.

3*dly*. Because the Relief of those thus Oppressed, and thereby forced to rise in Arms, being really intended: To think to effectuate the same by Reductions upon Specialities, is neither Advisable nor Practicable, as may easily appear by what follows.

4*ly*. Because the persons Forfeited, and now expecting to be Restored, are above five hundred: And all the Specialities that can be found by the greatest stretch of the most subtile Invention, will not afford Relief to fifty of the said five hundred: So that above four hundred and fifty, and these of the Poorest and most Distressed, must still remain in Misery. Besides, that by the making and allowing of the foresaid stretches to find out Informalities, The Rules, Forms and Practique of the Court of Justiciary, are like to be rendred uncertain and doubtful; which is of far more dangerous Consequence, then any Inconvenience that can be justly apprehended from a general Act.

5*ly*. Because when the Design is known and manifest, *viz.* To Relieve and Restore the foresaids persons Forfeited, to go about to do the same under the colour of Informalities, which can reach but a few; and the greater part of these few very lamely and constrainedly; is

but

but to expose, both the Justice and Prudence of the Kingdom, unless at the same time the Righteousness of these Reductions be by a general Act fairly owned and declared.

6ly. Because it is well known that the first appearance of His Majesty when Prince of *Orange* for our Relief and Deliverance, was Light and Joy, and as Life from the Dead to all these Afflicted persons: And that in effect they still are and will perpetually prove the persons most True and Faithful to His Majesty. Whereas their former Persecutors did then sink into Grief and Dispondency, so that it cannot be thought that any true Friend to King *William* will now offer to oppose these poor Mens restitution.

But the great and common Objection, is, to restore persons who were Forfeited for rising in Arms upon necessary standing Laws, and clear and evident Probation, were to lay down the worst of preparatives to encourage Rebellions for the future.

To which it is answered, *First*, That it is earnestly wished that the persons that make this Objection may be well considered, whether they be Byassed by particular Interest, or truly, and at the bottom approvers of the late Proceedings against King *James*.

2ly. It is a known Rule, That in Criminals, as to either Condemnations, or Absolutions Precedents and Examples are of no force.

3dly. That whatever the King and Parliament shall now do by their Soveraign power, upon consideration of particular Circumstances, as to things can never in Law or Sense be made preparative to hinder the Execution of standing Laws for hereafter: It being most certain, that when ever these Laws shall be transgressed, or contravened, the alledging of things for a preparative, found by King and Parliament to be distinguished by their Circumstances, would be of no force.

4ly. As these miserable Attempts at *Pentland* and *Bothwell-Bridge* were contrary to standing Law, so it is undenyable, that all the lesser attempts made through out the Kingdom after the Prince of *Orange* his Arrival into *England*, against King *James* before the meeting of the Estates; do fall under the same construction: And that all the difference, as to this point that can be made betwixt them, is that (Blessed be God) these had the far better success.

5ly. As in *England* they needed not a general Act, so we see that the late Forfeitures have been Reversed and Rescinded upon such slender Reasons, that if there had been need of a general Act, their Parliament had never stood to have past it.

6ly. Can any man alledge, that the Rescinding of Forfeitures for these former Insurrections, can be a bad preparative to encourage Insurrections for the future: But at the same time he must think, that the late great Revolution, may likewayes be drawn into a far more mischievous consequence: A thought, which certainly all honest Men must abhor.

And therefore seing that the Oppressions of the Forfeited persons are clearly acknowledged by the Claim of Right; their Relief more then insinuate by His Majesties Declaration, while Prince of *Orange*: Their Redress expressly assured by the Meeting of the Estates: Their Restitution plainly Assented to by His Majesties printed Instructions; the manner of their Relief by Specialities evidently impracticable and delusive: And that the Forfeited persons themselves cannot fail to be amongst the truest Friends to King *William*. What reason can be adduced to hinder their Restitution by a general Act; specially seeing, that the alone publishing of this Representation, may and will undoubtedly cut off the ill consequence of a supposed preperative, to the end of the World.

But it is further objected, That as to many of these Forfeitures, there are Donators; and where Donators are, Forfeitures cannot be Rescinded, unless the Donators be particularly called, which at this time hath been omitted.

To which it is answered. *First*, That if there were any weight in this Objection, as there is none, It could only be Objected with any probability against the Reductions of particular Forfeitures. But to say, That when the King and Parliament proceeds by vertue of their Soveraign and Legislative Power, to Rescind Forfeitures in general: And that in Prosecution of the States Claim of Right, and after their having Forfeited the late King *James* for the Causes, and in the manner, we have seen, is neither reasonable nor tollerable.

2dly.

3 *dly*. It is denyed that Donators need be called to *Reductions* of Forfeitures in Parliament, *per modum justitiæ*. Because in effect, they have no proper Interest, in as much as all their Interest is only founded in the Gift, which is consequential to the Sentence of Forfeiture; and must of necessity stand or fall as the Sentence is found to be just or unjust: And the Gift being a free Gift of His Majesty, and the King and Parliament together, reviewing the Sentence, whether just or unjust; and His Majesties Advocate, the proper Contradictor, being always present at such Reductions, to affirm that the Donators must be called to a cognition of this nature to be made by King and Parliament, is evidently unnecessary.

3 The proper case requiring Donators to be called is when either their gifts are questioned, or there falls in a competition about them; but to think, that where the gift is free and gratuitous, as the Kings gifts are: That the King, the Author of the gift, with the Parliament, having the Soveraigne Authority of the Kingdom: May not review the sentences upon which these gifts proceed: Is obviously unjust and presumptuous.

4 Let search be made into the records, and it will be found that this point was never before Controverted, for albeit that it may be found that some times a Donator (and it may be two cannot be found) hath been called *Ex superabundanti*. And it is like for the particular repeating and stating of his intromissions. Yet generally, it will appeare that to reductions *per modum Justitiæ*. Donators were not called: Nor is their any ground here to distinguish betwixt Reductions upon the head of irrelivancy, and reductions for want of due probation; Seing that on the part of these that gave sentence, both are alike unjust. And if it be alledged, that the Donators in the second case should be called: Because he may supply the probation. It may be as justly affirmed, that he may be called in the first, because he may add to the accusation; which yet is by all denyed. But the true reason of the Parliaments practice in this Case, Is because that Donators have only gratuitous Gifts: And as the King is their Author, so the King and Parliament have the Soveraigne Power, and only proper interests to Re-examine all such sentences, They being only pronounced at the Kings Advocats instance, and the Authority of the Parliament supplying all Defects.

But 5. To put this question out of doubt, the records of Parliament do afford plain and almost paralel instances to the Case in hand, that our Parliaments have rescinded forfeitures without calling the Donators, and that by a general Act, where the Case appears to be rather less Favourable, as may be clearly seen in the instance of that general reduction of Forfeitures that was in the Yeare 1585. And in many other Instances extent in the records of Parliament.

There is another question here moved whether Transactions, and Compositions, made by the Persons Forfeited, or their Friends for them, with their Donators, can be declared void and the sums payed, or agreed to be payed in composition, ordained to be restored, and some incline to think that this cannot be in respect that here is a Transaction which is an expres bargain on the account of the Hazard, and the Faith of such Transactions is so established by Law, that they cannot, be called in question. But on the other Hand it is to be considered, That the difference of Transactions from other Bargains, Is that by a Transaction some thing doubtful and litigious betwixt two parties is agreed, and the pretence of the one party Remitted or Discharged for some consideration to be given by the other, which being a method and expedient to terminate, and put an end to pleas, the Law has been more careful to preserve and establish such agreements. But by this it also plainly appears that the Bargains and Compositions made with Donators, were in effect no Transactions. But plaine Bargains of purchas, for there being neither *Res*, nor *Lis Dubia* in the Case, both the sentence and gift of Forfeiture being clear according to the Law for the time, It is evident that the Bargains that the Donators made, were direct bargains of Sale, for as high a price as they could get. And that they were alike ready, to make over their gifts, either to the Forfeited Persons, or to Strangers which of them did bid most. So that if they sold these Estates within the Worth, It was not on the account of any pretension the buyer might have either to the Estate or the price of it, But meerly from the common *odium*, and uncertainty of all Forfeitures, which made them content to take what they could get from any hand whatsomever. 2*dly* This may be yet farther cleared if the case be put of the Donators

Forfeit Estate to a stranger. In which case it cannot be quest-
be reduced the Person forfeited would be reponed to his
recourse upon his warrandice against the Donator: How
purchais should be thought in this point to differ from the
of a stranger is evidently inconceivable. Its granted if the Bargain had been expres-
with this Condition that no event or revolution tho' reducing the forfeiture should give
ground of repetition, that then condition should be kept, the Bargain in this case being a plain
Bargain of hazard as of a *Jactus retis*, or the like. But then what composition in *Scotland*
whether with friend or stranger was so concluded. 2*ly* Suppose a Bargain had been so made
yet it most be fairly and honestly made without Fear, Force, or Concussion, which Leads to a
third Argument. *viz.*

3. *Esto*, That the compositions for Forfeitures had been made upon these expres's terms (as
yet we know none in *Scotland* were) that the parties Forfeited should not repeate their money
tho' the Forfeiture should come to be reduced, yet even in this case if this Bargaine was agried
to out of extreme necessity, The party Forfeited having no other remedy to prevent the star-
ving and Ruining of himselfe and his Family, can any rational man deny but that this extremi-
ty going over by a happy change of times, the Person who was thereby forced should be
relieved of his Bargain, and reponed against it. But so it is that this is directly our present case,
It being undenyable that the forfeit Persons or their Friends who of late componed for their
Estates with Donators did doe it meerly for preventing the utter Ruine of themselves, their
Families and Creditors, For being prest with the severity of a Forfeiture and rigid *Donator*
that left them nothing, what stronger Fear, Force, and Concusion could men be under,
so that if Law restore against Bargains made throw fear and Force, as we know it doeth, cer-
tainly Restitution in the case in hand is the most Just that ever was heared of, specially if it be
considered that this Restitution is now demanded from King and Parliament, whose Soveraign
power may and ought in equity to grant it tho' in the strick Law, it were more doubtful as in-
deed it is not.

4. Not to mention how at this time the whole Kingdom is most happily relieved and Dis-
charged of Bonds and Subscriptions, and even of Oaths, (which in Law are more binding
than transactions) formerly imposed tho' by a necessity far inferior to that whereby these com-
positions were extorted, doe we not see how that by the Act Debitor and Creditor 1661. The
Faith of private bonds was upon for less considerations altered and superceeded, and even ex-
pres's bargains concerning proper wodsets clearly innovat. and Renunciations upon agreement
Discharged It then the Parliament did at that time think fit upon bare Reasons of conveniency
to make such stretches upon private Bargains fairly concluded, can any Rational Man think
that compositions so visibly extorted upon such unjust grounds as the late Forfeitures were
should now be sustained.

5. Was it not upon this most just Consideration, that his Majesty in his printed Instructions
allowes his consent to be given to what the Parliament should propose for restitution to be made
of Fines, or Compositions for fines or Forfeitures, from those who had the Benefite of them; so
that indeed it may Justly be wondred, how that after the Oppressions we have seen, and the
force that men have been laid under to redeem their Estates, from them by giving often more
then the half to such as assisted to spoile them, any should have the confidence either to call
such compositions legal tranfactions, or to plead that they ought still to be regarded as binding,
specially after that his *Majesty* hath so clearly declared himselfe in this point.

But 6*ly* And lastly and for superabundance, it is certain that in many Cases the Donators
did compound or sell the Estats Forfeited without any consent of the Party Forfeited, And
farther it can be made appear in some Cases, that men did alwayes refuse to consent to the Bar-
gain, so that to alledge a transaction in these Cases, to bar them or their Friends from Repetition
were most absurd.

In Respect whereof the general Act ought to pass as it is conceived, and unanimously voted
by the Committee of *Parliament*.

276663